



SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-815, OMB Control No. 3235-0769]

Submission for OMB Review; Comment Request; Extension: Rule 139b

Upon Written Request, Copies Available From
Securities and Exchange Commission
Office of FOIA Services
100 F Street, NE
Washington, DC 20549-2736

Notice is hereby given that the Securities and Exchange Commission (the “Commission”) has, in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. 3501 et seq.) (“PRA”), has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information, “Rule 139b Disclosure of Standardized Performance,” in connection with the Rule 139b (17 CFR 230.139b) under the Securities Act of 1933 (15 U.S.C. 77a et seq.) (“Securities Act”) that was adopted by the Commission on November 30, 2018, as discussed below.¹

As directed by the Fair Access to Investment Research Act of 2017 (Pub. L. 115-66, 131 Stat. 1196 (2017) (the “FAIR Act”), the Commission adopted rule 139b under the Securities Act to extend the safe harbor under rule 139 to a “covered investment fund research report.” Specifically, rule 139b provides a safe harbor to a broker-dealer who publishes or distributes, in the regular course of its business, research reports concerning one or more “covered investment fund(s)” while participating in the distribution of a covered investment fund’s securities.

In the Adopting Release, the Commission adopted the provision that rule 139b include a standardized performance requirement. The Commission believes that standardized performance presentation is an appropriate requirement because investors tend to consider fund performance a significant factor in evaluating or comparing investment companies, and the requirement

¹ See Release No. 33-10580 (Nov. 30, 2018) [83 FR 64180 (Dec. 13, 2018)] (“Adopting Release”). Rule 139b became effective on January 14, 2019.

addresses potential investor confusion if a communication were not easily recognizable as research as opposed to an advertising prospectus or supplemental sales literature. Rule 139b requires that research reports about open-end funds that include performance information must present it in accordance with paragraphs (d), (e), and (g) of rule 482. Rule 139b also requires that research reports about closed-end funds that include performance information must present it in accordance with instructions to item 4.1(g) of Form N-2. Performance measures calculated by broker-dealers are not required to be kept confidential and there is no mandatory retention period. The Commission anticipates that compliance with these performance measures for each fund discussed in a research report, and for which the performance measures apply, would increase compliance costs for broker-dealers seeking to publish or distribute a covered investment fund research report.

It is difficult to provide estimates of the burdens and costs for those broker-dealers that will include performance information in a rule 139b research report. As discussed in the Adopting Release, this is difficult to estimate because current data collected does not reflect the affiliate exclusion, does not include the entire universe of covered investment funds, and it is uncertain what percentage of communications currently filed as rule 482 advertising prospectuses (or rule 34b-1 supplemental sales materials) will instead be published in reliance of rule 139b, as covered investment fund research reports.² For purposes of the PRA, we estimate that 10% of the rule 482 and rule 34b-1 communications currently filed by broker-dealers with FINRA (approximately 48,341) could be considered as rule 139b covered investment fund research reports. We estimate that broker-dealers will publish annually 4,834 (10% of 48,341) covered investment fund research reports. Moreover, we assume for purposes of the PRA that all estimated rule 139b research reports will include fund performance information. We further estimate that 1,169 broker-dealers would likely be respondents to the collection of information

² See Adopting Release, *supra* note 1, n. 413 and accompanying paragraph.

with a frequency of 4.1 responses per year.³ Additionally, we estimate that each research report will require 3 hours of ongoing internal burden hours by a broker-dealers' personnel to comply with the rule 139b collection of information requirements, which for each broker-dealer is estimated to be 12.3 internal burden hours.⁴ In sum, we estimate that rule 139b's requirements will impose a total annual internal hour burden of 14,379 hours on broker-dealers.⁵ We do not think there is an external cost burden associated with this collection of information.

This collection of information requirement would not be mandatory for broker-dealers seeking to rely upon rule 139b, but would be necessary for those broker-dealers that would like to provide performance information in their covered investment fund research reports. Responses to the information collections will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

The public may view background documentation for this information collection at the following website: www.reginfo.gov. Find this particular information collection by selecting "Currently under 30-day Review - Open for Public Comments" or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** to (i) MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street, NE, Washington, DC 20549, or by sending an email to: PRA_Mailbox@sec.gov.

³ Based on information provided by FINRA, for the period January 1, 2021 through December 31, 2021, there were an aggregate of 48,341 filings that were coded as either Rule 482 or Rule 34b-1 filings. Furthermore, the Commission estimates that for the period January 1, 2021 through December 31, 2021, there were 4,834 covered investment fund research reports /1,169 broker-dealers = 4.1 annual responses per broker-dealer.

⁴ 4.1 annual responses per broker-dealer x 3 internal burden hours = 12.3 annual internal burden hours per broker-dealer.

⁵ 12.3 annual burden hours * 1,169 broker-dealers.

Dated: September 12, 2022

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022-20019 Filed: 9/15/2022 8:45 am; Publication Date: 9/16/2022]